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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,222	06/05/2006	Linta Costel	COSL0101PUSA	3734

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EXAMINER

STEPHENS III, JOSE S

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/596,222	Applicant(s) COSTEL, LINTA	
	Examiner JOSE S. STEPHENS III	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/16/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two hooks mentioned in claim 13, and the holder part in claim 17 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: the recitation "gripe" is misspelled and should be changed to "grip" throughout the disclosure. Appropriate corrections are required.

Claim Objections

3. Claims 5, 7, 9, 16 and 17 are objected to because of the following informalities: the recitation "gripe" is misspelled and should be changed to "grip". Appropriate corrections are required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 3, 6, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 3 recites the limitation "the connection" in line 1. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 6 recites the limitation "the hinging connection" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.
8. Claim 7 recites the limitation "the cover part" and "the holder part" in line 3. There is insufficient antecedent basis for this limitation in the claim.

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9. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by McEwan (US Patent 5,906,274).

With respect to claim 1, figures 1-4 of McEwan teaches a holder for a data carrier comprising a bottom side 10 and a top side 11, with an insert space (see figure 1) in between the top and bottom sides, which connects the top and bottom side, and the top side makes an angle between 10 and 80 degrees with the bottom side when the case is opened.

With respect to claim 2, McEwan teaches the top side makes an angle between 20 and 70 degrees with the bottom side when the case is opened.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 3-10 and 14-16 are rejected under 35 U.S.C. 103(a) as being

unpatentable over McEwan (US Patent 5,906,274).

With respect to claim 3, figure 1 of McEwan teaches the top and bottom sides are connected by a connection element 11a (separate hinge). It would have been an obvious matter of design choice to make the connection element of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

With respect to claim 4, McEwan the connection element is made from a transparent material (see column 1, lines 4-8; and column 2, lines 25-31).

With respect to claim 5, McEwan teaches the holder comprises grip means, where one part of the edge of one side of the connection element. The connection element (separate hinge) is capable of being gripped on either side when connected to the top and bottom side.

With respect to claim 6, figure 1 of McEwan teaches the connection element is placed nearby an axis of the hinging connection and is parallel to that axis.

With respect to claim 7, figure 2 of McEwan teaches a lock formed by a hook 13 on the top side and a strip 12a on the bottom side, which the hook can grip.

With respect to claim 8, McEwan the strip comprises a flexible material (see column 1, lines 4-8).

With respect to claim 9, figure 2 of McEwan teaches the holder comprises an operation element 12 which is connected to the strip, in a way that using the operation element has a result of the flexible movement of the strip out of the grip with the hook.

With respect to claim 10, figure 2 of McEwan teaches the operation element comprises a movable button 12 in the holder.

With respect to claim 11, figure 1 of McEwan teaches the button is located nearby the hinge axis and the lock is located nearby the opposite side of the hinge axis.

With respect to claims 14 and 15, figure 1 of McEwan teaches the insert space comprises position means (the combination of the sidewalls of the holder the supporting surface and reference number 15) for the data carrier, which decides a supporting surface (surface that data carrier rests on) for the data carrier. However, McEwan does not teach the supporting surface runs along slanting with respect to the bottom. It would have been an obvious matter of design choice to modify the angle of the supporting surface with respect to the bottom, since applicant has not disclosed that angle of the supporting surface with respect to the bottom solves any stated problem or is for any

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particular purpose and it appears that the invention would perform equally as well with the parallel supporting surface with respect to the bottom of McEwan.

With respect to claim 16, figure 1 of McEwan teaches the position means comprise an edge (sidewalls of the holder) to grip the edges of the data carrier.

15. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McEwan (US Patent 5,906,274) as applied to claims 1, 14 and 16 above, and further in view of Cheris et al. (US Patent 5,715,938).

With respect to claim 17, McEwan does not teach the bottom side of the holder comprises an edges, that has a cross sectional U-shape, which grips and arch shape outline of the data carrier. However, figure 5 of Cheris et al. teaches a bottom part 12 of a holder 10 that comprises a cross sectional U-shape (P_2) that grips an arch shape outline of a data carrier. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the holder of the McEwan by incorporating the shape of the holder, as taught by Cheris et al., to make the holder more aesthetically pleasing to customers.

With respect to claim 18, figure 1 of Cheris et al. teaches the holder is assembled by a beam shaped part 18 and a taco shaped part 16.

Allowable Subject Matter

16. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are holders analogous to applicant's instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JILA M MOHANDESI/
Primary Examiner, Art Unit 3728

JSS
September 12, 2008